NOTES OF CASES.

IRREGULARITY IN STATUTES GOVERNING THE TRANSFER OF TRUST PROPERTY OUT OF THE STATE—VA. CODE ANNO., SECS. 2629-2633 INCLUSIVE.—There is a marked and confusing irregularity in the statutes relative to transferring trust effects out of the State. Section 2629 deals with *property* or *money* of minor or insane persons, and there is nothing in the section itself which requires that there should be any publication of the application for the transfer. Sec. 2630, however, which deals with the transfer of the *proceeds* of *real estate*, provides in its last sentence that no such transfer shall be made until there is done what is required by secs. 2631 and 2633 to authorize a transfer under sec. 2629. By reference to these former sections (2631 and 2633) it will be seen that nothing is therein required to be done as to sec. 2629. Section 2631, however, provides that "No such order" for a transfer shall be made until the application shall have been published, &c. As to sec. 2630, therefore, this latter provision is simply a repetition of what is contained in the last sentence of sec. 2630, referred to above. In *Snavly* v. *Harkrader*, 29 Gratt. 112, 130, the words, "No such order" beginning the section 2631 are construed to refer to both secs. 2629 and 2630, that is, the court decided that the provision requiring publication of the application for transfer, &c, applied to both sections. So that, even if said last sentence of sec. 2630 had been omitted altogether, it would seem that it would still be necessary to publish application, &c., both for the transfer of property or money under sec. 2629, and for the transfer of proceeds of real estate under sec. 2630.

But compliance with sec. 2633 is also required in the last sentence of sec. 2630. Sec. 2633 applies only to transfer of non-resident trustees, and is otherwise practically a repetition of sec. 2631, and hence the reference to it in sec. 2630 is entirely useless and confusing. The defects might be remedied by leaving out the last sentence of 2630 and adding both to secs. 2629 and 2630 the following words: "No such order shall be made until the requirements of sec. 2631 have been complied with, and then adding after the words, "No such order" in sec. 2631, the following words: "As is mentioned in secs. 2629 and 2630."

MASTER—ACTS OF SERVANT—ASSAULT AND BATTERY—SCOPE OF AUTHORITY—LIABILITY.—In *Waaler* v. *Great Northern Ry. Co.* (S. D.), 100 N. W. 1097, it was held:

Where railroad employés were directed to build a snow fence on property not owned by the railroad, and in compliance with a request of the owner one of her servants went to the crew and remonstrated with them, forbade them to erect the fence there, and demanded the removal thereof, whereupon, at the instance of the foreman of the crew, commanding one of his men to "go after" the owner's servant, he was set upon and beaten, the assault was not within the scope of the authority of the railroad company's employé, and hence the railroad was not liable therefor, citing *Holler* v. *Ross*, 68 N. J. Law, 324, 53 Atl. 472, 59 L. R. A. 943, 96 Am. St. Rep. 546; *Henry* v. *Pittsburgh Ry. Co.*, 139 Pa. 289, 21

Atl. 157; *Vanderbilt* v. *Richmond Turnpike Co.*, 92 N. Y. 479, 51 Am. Dec. 315; *Sagers* v. *Nuckolls* (Col. App.), 32 Pac. 187; *Dolan* v. *Hubinger* (Iowa) 80 N. W. 514; *Ry. Co.* v. *Divinney* (Kan.), 69 Pac. 352; *Isaacs* v. *Third Avenue Ry. Co.*, 47 N. Y. 122, 7 Am. Rep. 418.

SPECIFIC PERFORMANCE—CONTRACT OF SALE—DELAY IN PAYING PURCHASE MONEY—NOTICE.—In a suit to enforce specific performance of a contract to convey land, the court will not countenance an unreasonable delay in paying the purchase money, nor aid the vendee to obtain an unfair advantage by acting only after the property has increased in value.

The fact that the vendee in a contract to convey land has expended money on the property, and that a portion of the purchase money paid has not been tendered back, are reasons for decreeing specific performance, though there has been delay in the payment of the balance of the purchase money.

A person purchasing land with notice of an enforceable contract by his vendor to sell to another may be compelled to specifically perform. *Cranwell* v. *Clinton Realty Co.* (N. J. Ch.), 58 Atl. 1030.

JUSTICES' JURISDICTION DENIED IN CASE OF PERSONAL INJURY—SEC. 2939 VA. CODE ANNO.—It is provided by statute that justices of the peace shall have jurisdiction of "any claim to specific personal property, or to any debt, fine or other money, or to damages for breach of contract, or for any injury done to property, real or personal, which would be recoverable by action at law or suit in equity," provided the claim does not exceed one hundred dollars, exclusive of interest. The Hustings Court of the City of Richmond in the case of *Kay* v. *Pelouze*, decided (December, 1904) that this language was not broad enough to give to justices jurisdiction in cases of personal injury. While the opinion seems to be in accord with the language of the statute, it will be a surprise to many to know that justices have not jurisdiction in all civil cases where the amount involved does not exceed one hundred dollars. It seems strange that the General Assembly should have conferred on justices jurisdiction to award one hundred dollars damages for an injury to a horse, and yet deny them the jurisdiction to award one cent damages for injury to person.

BUILDING AND LOAN ASSOCIATIONS—INSOLVENCY—ACCOUNTING WITH BORROWING STOCKHOLDERS.—Where the loan contracts of a building and loan association are not usurious, a borrowing stockholder, on a settlement with the association after its insolvency, is not entitled to credit on his loan for premiums paid during its solvency. *Gwinn* v. *Iron Belt Bldg. & Loan Ass'n* (C. C. W. D. Virginia), 132 Fed. 710.

UNFAIR COMPETITION—DUPLICATION OF TALKING MACHINE RECORDS.—The duplication of disk records of vocal and instrumental music for use in talking machines by taking an impression thereof with a matrix, and placing the copies so made in the market, colored in imitation of the originals, and bearing the same numbers by which they are marked by the original manufacturer and designated in its catalogue, constitutes unfair competition. *Victor Talking Machine Co.* v. *Armstrong* (C. C. S. D. New York), 132 Fed. 711.